

ESTTA Tracking number: **ESTTA269578**

Filing date: **03/02/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	bioMerieux
Granted to Date of previous extension	03/04/2009
Address	Chemin de l'Orme 69820 Marcy L'Etoile, FRANCE

Attorney information	Andrea Anderson Holland & Hart LLP P.O. Box 8749 Attention: Tracy Baker Denver, CO 80201 UNITED STATES docket@hollandhart.com, aanderson@hollandhart.com, drickers@hollandhart.com, achaselfeld@hollandhart.com, cshearer@hollandhart.com Phone:303-473-2861
Domestic Representative	Andrea Anderson Holland & Hart LLP P.O. Box 8749 Attention: Tracy Baker Denver, CO 80201 UNITED STATES docket@hollandhart.com, aanderson@hollandhart.com, drickers@hollandhart.com, achaselfeld@hollandhart.com, cshearer@hollandhart.com Phone:303.473.2861

### Applicant Information

Application No	77497391	Publication date	11/04/2008
Opposition Filing Date	03/02/2009	Opposition Period Ends	03/04/2009
Applicant	Woolpert, Inc. 409 East Monument Avenue Dayton, OH 45402 UNITED STATES		

### Goods/Services Affected by Opposition

Class 009.

All goods and services in the class are opposed, namely: computer software program for modeling the hydrology and water quality associated with developed land sites and the pollutant transfer and trapping efficiency of specific management practices

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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## Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2712679	Application Date	04/03/2001
Registration Date	05/06/2003	Foreign Priority Date	01/15/2001
Word Mark	AIR IDEAL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: AEROBIOCOLLECTOR WHICH IS A DEVICE FOR THE SAMPLING OF ATMOSPHERIC AIR AND THE DETECTION OF BIOCONTAMINATION AND IS COMPRISED OF A PUMP IN ORDER TO COLLECT AIR SAMPLES AND MOVING SCREENS IN ORDER TO PICK UP ALL THE VIABLE PARTICLES OF A PREDETERMINED SIZE AND SOFTWARE TO RECORD THE PARAMETERS OF THE SAMPLING OPERATION		

Attachments	76234592#TMSN.gif ( 1 page )( bytes ) Notice of Opposition.pdf ( 10 pages )(1954616 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Andrea Anderson/
Name	Andrea Anderson
Date	03/02/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

bioMérieux,  Opposer,  v.  Woolpert, Inc.,  Applicant.	Opposition No.:  Mark: IDEAL  Serial No.: 77/497,391
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**NOTICE OF OPPOSITION**

bioMérieux, a corporation of France, a related company of bioMérieux, Inc., a Missouri corporation, having a principal place of business at Chemin de l'Orme, 69820 Marcy L'Etoile, France, ("Opposer") believes that it will be damaged by the registration of the mark IDEAL shown in U.S. Trademark Application Serial No. 77/497,391 for "computer software program for modeling the hydrology and water quality associated with developed land sites and the pollutant transfer and trapping efficiency of specific management practices" and hereby opposes it. As grounds for its opposition, Opposer alleges that, upon actual knowledge with respect to itself and its own actions, and upon information and belief as to other matters:

1. Opposer is a world-wide company specializing in the field of in vitro diagnostics for medical and industrial applications.
2. Since well prior to the filing date of Application No. 77/497,391, Opposer has used the mark AIR IDEAL in connection with a device for sampling air quality.

3. Opposer owns U.S. Registration No. 2,712,679 for the mark AIR IDEAL for “aerobiocollector which is a device for the sampling of atmospheric air and the detection of biocontamination and is comprised of a pump in order to collect air samples and moving screens in order to pick up all the viable particles of a predetermined size and software to record the parameters of the sampling operation.” (Printouts from the TESS/TARR database are attached as Exhibit A.)

4. The foregoing registration is valid and subsisting and constitutes prima facie evidence of the validity of the mark and registration, and of Opposer’s ownership of and exclusive right to use its AIR IDEAL mark in connection with the goods set forth in the registration. The registration also provides constructive notice of Opposer’s ownership of its AIR IDEAL mark.

5. Registration No. 2,712,679 was issued on May 6, 2003, well prior to the filing date of Application Serial No. 77/497,391.

6. In view of the similarity of the parties’ marks and the closely related nature of the parties’ goods, Applicant’s mark IDEAL so resembles Opposer’s previously used and registered AIR IDEAL mark as to be likely to cause confusion, or to cause mistake, or to deceive in violation of Section 2(d), 15 U.S.C. §1052(d).

WHEREFORE, Opposer respectfully requests that the IDEAL mark shown in Application No. 77/497,391 be refused registration and that the opposition be sustained.

The filing fee in the amount of \$300 is being transmitted electronically with this submission. Any deficiency in the fee should be charged to Deposit Account No. 08-2623.

Dated this 2nd day of March 2009.

Respectfully submitted,

A handwritten signature in cursive script, reading "Andrea Anderson", followed by a horizontal line.

Andrea Anderson  
Annie Chu Haselfeld  
HOLLAND & HART LLP  
One Boulder Plaza  
1800 Broadway, Suite 300  
Boulder, CO 80302  
(303) 473-2861 (phone)  
(303) 473-2720 (fax)

**Attorneys for Opposer  
bioMérieux**

**CERTIFICATE OF SERVICE**

I certify that on March 2, 2009, I served a copy of the above NOTICE OF OPPOSITION and EXHIBIT A to the following by:

☒  
☐  
☐

U.S. Mail, postage prepaid  
Hand Delivery  
Fax

Woolpert, Inc.  
409 East Monument Avenue  
Dayton, OH 45402

and

Karen K. Hammond  
Porter Wright Morris & Arthur  
41 S. High Street Suite 2800  
Columbus, OH 43215-6194

/Heidi Macy/

## EXHIBIT A





## United States Patent and Trademark Office

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<b>Word Mark</b>	AIR IDEAL
<b>Goods and Services</b>	IC 009. US 021 023 026 036 038. G & S: AEROBIOCOLLECTOR WHICH IS A DEVICE FOR THE SAMPLING OF ATMOSPHERIC AIR AND THE DETECTION OF BIOCONTAMINATION AND IS COMPRISED OF A PUMP IN ORDER TO COLLECT AIR SAMPLES AND MOVING SCREENS IN ORDER TO PICK UP ALL THE VIABLE PARTICLES OF A PREDETERMINED SIZE AND SOFTWARE TO RECORD THE PARAMETERS OF THE SAMPLING OPERATION
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	26.13.21 - Quadrilaterals that are completely or partially shaded
<b>Serial Number</b>	76234592
<b>Filing Date</b>	April 3, 2001
<b>Current Filing Basis</b>	44E
<b>Original Filing Basis</b>	1B;44D
<b>Published for Opposition</b>	February 11, 2003
<b>Registration Number</b>	2712679
<b>Registration Date</b>	May 6, 2003
<b>Owner</b>	(REGISTRANT) BIO MERIEUX CORPORATION FRANCE Chemin de l'Orme 69280 MARCY L'ETOILE FRANCE
<b>Attorney of Record</b>	Michael A. Cantor
<b>Priority Date</b>	January 15, 2001
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "AIR" APART FROM THE MARK AS SHOWN
<b>Type of Mark</b>	TRADEMARK



Register PRINCIPAL  
Live/Dead LIVE  
Indicator

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Serial Number: 76234592 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2712679

Mark



(words only): [AIR IDEAL](#)

Standard Character claim: No

Current Status: [Registered](#).

Date of Status: [2003-05-06](#)

Filing Date: [2001-04-03](#)

Transformed into a National Application: No

Registration Date: [2003-05-06](#)

Register: [Principal](#)

Law Office Assigned: [LAW OFFICE 108](#)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

Current Location: [40S -Scanning On Demand](#)

Date In Location: [2008-03-25](#)

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LAST APPLICANT(S)/OWNER(S) OF RECORD

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1. [BIO MERIEUX](#)

Address:

[BIO MERIEUX](#)

[Chemin de l'Orme](#)

[69280 MARCY L'ETOILE](#)

[France](#)

Legal Entity Type: [Corporation](#)

State or Country of Incorporation: [France](#)

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## GOODS AND/OR SERVICES

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**International Class:** 009

**Class Status:** Active

AEROBIOCOLLECTOR WHICH IS A DEVICE FOR THE SAMPLING OF ATMOSPHERIC AIR AND THE DETECTION OF BIOCONTAMINATION AND IS COMPRISED OF A PUMP IN ORDER TO COLLECT AIR SAMPLES AND MOVING SCREENS IN ORDER TO PICK UP ALL THE VIABLE PARTICLES OF A PREDETERMINED SIZE AND SOFTWARE TO RECORD THE PARAMETERS OF THE SAMPLING OPERATION

**Basis:** 44(e)

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

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## ADDITIONAL INFORMATION

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**Disclaimer:** "AIR"

**Design Search Code(s):**

26.13.21 - Quadrilaterals that are completely or partially shaded

**Foreign Application Number:** 013076571

**Foreign Registration Number:** 013076571

**Foreign Registration Date:** 2001-01-15

**Country:** France

**Foreign Filing Date:** 2001-01-15

**Foreign Expiration Date:** 2011-01-15

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## MADRID PROTOCOL INFORMATION

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(NOT AVAILABLE)

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## PROSECUTION HISTORY

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**NOTE:** To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-02-18 - Review Of Correspondence Complete

2009-02-02 - PAPER RECEIVED

2008-03-25 - Case File In TICRS

2003-05-06 - Registered - Principal Register

2003-02-11 - Published for opposition

2003-01-22 - Notice of publication

2002-11-18 - ITU claim deleted

2002-10-08 - Approved for Pub - Principal Register (Initial exam)

2002-10-02 - Assigned To Examiner

2002-09-30 - Jurisdiction Restored To Examining Attorney  
2002-09-30 - Ex parte appeal - Instituted  
2002-09-26 - EXPARTE APPEAL RECEIVED AT TTAB  
2002-09-12 - Communication received from applicant  
2002-09-12 - PAPER RECEIVED  
2002-03-25 - Final refusal mailed  
2001-11-05 - Communication received from applicant  
2001-11-08 - Communication received from applicant  
2001-08-13 - Non-final action mailed  
2001-07-18 - Assigned To Examiner

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**  
Michael A. Cantor

**Correspondent**  
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